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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

'08 CV 604 J CAB

ERICK GALLO, ARMANDO
GUTIERREZ, ANGEL
MIRAMONTES, ANTONIO
MIRAMONTES, LUIS
MIRAMONTES, and MANUEL
MONTES, individually, on behalf of
all others similarly situated, and on
behalf of the general public,
Plaintiffs,

vs.

MASCO CORPORATION, a
corporation, MASCO SERVICES
GROUP CORPORATION, a
corporation, GUY EVANS, INC., a
corporation, BUILDER SERVICES
GROUP, INC., a corporation, and
DOES 1 through 20, inclusive
Defendants.

CASE NO.

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

1. Failure to Pay Overtime Wages in Violation of the FLSA (29 U.S.C. §§ 201, *et seq.*)
2. Failure to Pay Overtime Wages in Violation of California Law (Lab. Code §§ 501, 1194, 1198, Wage Order 16-2001)
3. Failure to Pay Reporting Time Wages in Violation of California Law (Wage Order 16)
4. Failure to Pay Minimum Wage for All Hours Worked in Violation of California Law (Lab. Code § 1194, Wage Order 16-2001)
5. Failure to Pay Prevailing Wages in Violation of California Law (Lab. Code §§ 1771, 1774)
6. Failure to Provide Meal Periods in Violation of California Law (Lab. Code §§ 226.7, 512, Wage Order 16)

7. Failure to Provide Accurate Itemized Wage Statements in Violation of California Law (Lab. Code § 226)
8. Waiting Time Penalties (Lab. Code §§ 201-203)
9. Failure to Reimburse Travel Costs and Other Business Expenses in Violation of California Law (Lab. Code § 2802)
10. Unfair Business Practices in Violation of California Business & Professions Code (Bus. & Prof. Code §§ 17200, et seq.)
11. Violation of the Family Medical Leave Act (Plaintiff Gallo Only) (29 U.S.C. §§ 2601, et seq.)
12. Violation of the California Family Rights Act (Plaintiff Gallo Only) (Gov't Code §§ 12945.1, et seq.)
13. Termination in Violation of California Fundamental Public Policy (Plaintiffs Gallo and Angel Miramontes Only)

DEMAND FOR JURY TRIAL

Individual and Representative Plaintiffs Erick Gallo, Armando Gutierrez, Angel Miramontes, Antonio Miramontes, Luis Miramontes, and Manuel Montes (collectively, ("Plaintiffs")), on behalf of themselves and all others similarly situated, complain against Defendants Masco Corporation, Masco Services Group Corporation, Guy Evans, Inc., Builder Services Group, Inc., and Does 1 through 20 (collectively, "Defendants") as follows:

THE PARTIES

1. Erick Gallo is, and during all relevant times was, a resident of Imperial County, and was employed by Defendants beginning in July, 2001, until he was terminated on August 31, 2007. During his employment with Defendants, Mr. Gallo worked as a carpenter and installer, at various locations, including El Centro, California.

2. Armando Gutierrez is, and during all relevant times was, a resident of Imperial County, and was employed by Defendants beginning in approximately April 2005.

1 During his employment with Defendants, Mr. Gutierrez worked as an Installer and Carpenter, at
2 various locations, including El Centro and San Diego.

3 3. Angel Miramontes is, and during all relevant times was, a resident of
4 Imperial County, and was employed by Defendants beginning in approximately December
5 2003, until he was terminated on August 27, 2007. During his employment with Defendants,
6 Angel Miramontes worked as an Installer, and was promoted to Foreman for Finish Carpenters.
7 He worked at various locations, including Indio, El Centro, Calexico, Imperial, Brawley,
8 Calipatria, and Heber. At the time of his termination, Angel Miramontes was the most senior
9 Foreman.

10 4. Antonio Miramontes is, and during all relevant times was, a resident of
11 Imperial County, and was employed by Defendants beginning in approximately October 2003.
12 During his employment with Defendants, Antonio Miramontes worked as an Installer and
13 Carpenter at various locations, including El Centro, San Diego and Blythe.

14 5. Luis Miramontes is, and during all relevant times was, a resident of
15 Imperial County, and was employed by Defendants beginning in approximately June 2003.
16 During his employment with Defendants, Luis Miramontes worked as an Installer, at various
17 locations, including El Centro.

18 6. Manuel Montes is, and during all relevant times was, a resident of
19 Imperial County. He was employed by Defendants in their office in Indio, California, between
20 approximately March 22, 2005, and October 2005; he resigned his position because among
21 other reasons, Defendants refused to reimburse work-related travel expenses. Thereafter, in
22 May 2006, Mr. Montes was rehired to work in Defendants' El Centro office. He resigned his
23 position in September 2007, because Defendants again refused to reimburse his work-related
24 travel expenses. During both terms of his employment with Defendants, Mr. Montes worked as
25 a garage door installer at various locations, in and around Indio, El Centro, Calexico, Imperial,
26 Brawley, Calipatria, and Heber.

1 7. Plaintiffs are informed and believe and thereon allege that Masco
2 Corporation is a corporation, that at all relevant times conducted business in Imperial County,
3 California. At all times relevant to the allegations in this complaint, Masco Corporation
4 operated a new construction and construction services business.

5 8. Plaintiffs are informed and believe and thereon allege that Masco
6 Services Group Corporation is a corporation, that at all relevant times conducted business in
7 Imperial County, California. At all times relevant to the allegations in this complaint, Masco
8 Services Group Corporation operated a new construction and construction services business.

9 9. Plaintiffs are informed and believe and thereon allege that Guy Evans,
10 Inc. is a corporation, that at all relevant times conducted business in Imperial County,
11 California. At all times relevant to the allegations in this complaint, Guy Evans, Inc. operated a
12 new construction and construction services business.

13 10. Plaintiffs are informed and believe and thereon allege that Builder
14 Services Group, Inc. is a corporation, that at all relevant times conducted business in Imperial
15 County, California. At all times relevant to the allegations in this complaint, Builder Services
16 Group, Inc. operated a new construction and construction services business.

17 11. Defendants Does 1-50, inclusive, are sued herein under fictitious names.
18 Their true names and capacities are unknown to Plaintiffs. When their true names and
19 capacities are ascertained, Plaintiffs will amend this complaint by inserting their true names and
20 capacities herein. Plaintiffs are informed and believe and thereon allege that each of the
21 fictitiously-named defendants is responsible in some manner for the occurrences herein alleged,
22 and that the damages of Plaintiffs and the Class Members herein alleged were proximately
23 caused by such Defendants.

24 12. Plaintiffs are informed, believe, and thereon allege that each of the
25 Defendants herein was, at all times relevant to this action, the agent, employee, representing
26 partner, and/or joint venture of the remaining Defendants and was acting within the course and

1 scope of the relationship. Plaintiffs are further informed, believe, and thereon allege, that each
2 of the Defendants herein gave consent to, ratified and authorized the acts alleged herein to the
3 remaining Defendants.

4 JURISDICTION AND VENUE

5 13. The First and Eleventh Causes of Action arise under the laws of the
6 United States. Thus, this Court has original jurisdiction, pursuant to 28 U.S.C. section 1331.

7 14. Plaintiffs' other Causes of Action are so related to Plaintiffs' First and
8 Eleventh Causes of Action, which are within this Court's original jurisdiction, that they form
9 part of the same case or controversy. Thus, this Court has supplemental jurisdiction, pursuant to
10 28 U.S.C. section 1337(a).

11 15. Venue in this District is proper, pursuant to 28 U.S.C. section 1391(b),
12 because a substantial part of Defendants' unlawful conduct occurred in Imperial and San Diego
13 Counties, Defendants conduct substantial business in Imperial and San Diego Counties, a
14 substantial part of the transactions at issue took place in Imperial and San Diego Counties, and
15 Defendants' liability arose in substantial part in Imperial and San Diego Counties.

16 FACTUAL ALLEGATIONS

17 Expense Reimbursement Policies and Practices

18 16. Defendants required Plaintiffs and other similarly situated employees to
19 drive their personal vehicles to work sites and to other locations as part of their job and in the
20 course of performing job duties, such as delivering or retrieving materials, delivering or
21 retrieving tools, and transporting other employees.

22 17. In using their personal vehicles for these business-related purposes,
23 Plaintiffs and other similarly situated employees incurred costs, including the cost of purchasing
24

1 gasoline, the cost of maintaining insurance and registering their vehicles, the cost of servicing
2 and maintaining their vehicles, and the wear on and depreciation of their vehicles.

3 18. Defendants consistently and as a matter of policy failed to reimburse
4 Plaintiffs and other similarly situated employees for the costs incurred in using their vehicle
5 either by failing to reimburse Plaintiffs and other similarly situated employees in an amount
6 equal to the costs incurred, or arbitrarily establishing reimbursement amounts unrelated to and
7 less than the actual expenditures.

8 19. On numerous occasions after submitting the required documentation and
9 expense reimbursement request, Plaintiffs and other similarly situated employees received no
10 expense reimbursement from Defendants but instead received a check from Randy Nelson,
11 Division Manager, drawn on his personal account which he represented as expense
12 reimbursement. However, Mr. Nelson regularly paid Plaintiffs and other similarly situated
13 employees less than the amount of the expense actually incurred and less than the amount of the
14 particular expense reimbursement request.

15
16 **Requirement that Employees Work Off-the-Clock**

17 20. Defendants routinely and as a matter of policy required that Plaintiffs and
18 other similarly situated employees perform work for which Defendants did not compensate
19 them. The uncompensated work includes, but is not limited to the following:

20 (a). Defendants required that Plaintiffs and other similarly situated employees
21 first report to Defendants' El Centro or Indio facility to gather and load materials, supplies, and
22 tools and to perform other duties in preparation for the on-site work that day. Defendants refused
23 to pay Plaintiffs and other similarly situated employees for this time even though these
24 preparatory tasks took between 15 and 45 minutes.

25 (b). At the end of the work day, Defendants required that Plaintiffs and other
26 similarly situated employees perform certain clean-up and related tasks. Although these tasks

1 sometimes required that Plaintiffs and other similarly situated employees work beyond the
2 scheduled end time – 3:15 p.m. or 3:30 p.m. – Defendants refused to pay Plaintiffs and other
3 similarly situated employees for this additional time and insisted that it need only pay Plaintiffs
4 until the scheduled end time.

5 (c). Plaintiffs and other similarly situated employees often reported to the
6 assigned work location before or at the scheduled start time but upon arrival received notice from
7 Defendants that they could not begin working until the job supervisor or foreman arrived, or
8 certain required materials or tools arrived. Despite Plaintiffs' and other similarly situated
9 employees' arrival at the scheduled start time and their readiness and willingness to work,
10 Defendants refused to pay Plaintiffs and other similarly situated employees for the time spent
11 waiting for persons, materials, or tools to arrive.

12 (d). On a number of occasions Plaintiffs and other similarly situated employees
13 received express directives from Randy Nelson and supervisor Ruben Holquin, that they could
14 not report the full amount of hours worked that day. Mr. Nelson or Mr. Holquin would either
15 provide no explanation with the directive or would explain that Plaintiffs and other similarly
16 situated employees could not report all hours worked because they should have completed their
17 duties in less time than it actually took, or that the budget for a particular project or job did not
18 have sufficient funding for the additional time. Plaintiffs and other similarly situated employees
19 did as directed and thereby under-reported the total hours they actually worked. As a result, they
20 did not receive pay for all hours worked.

21 (e). Plaintiffs and other similarly situated employees submitted timesheets that
22 accurately recorded their hours worked. When they received their paychecks for those reported
23 hours, however, the wage statements and pay amounts did not accurately reflect all hours worked
24 and reported. As a result, Plaintiffs and other similarly situated employees did not receive
25 compensation for all hours worked.

Meal Period Practices

21. Defendants improperly denied Plaintiffs and other similarly situated employees a full thirty minute duty-free meal period during each five hours of work in compliance with California law.

22. On workdays in which Plaintiffs and other similarly situated employees worked more than ten hours, Defendants frequently failed to provide a second meal period in compliance with California law.

Failure to Pay Reporting Time Pay

23. Throughout the relevant time period, Defendants conducted "safety" and "foreman" meetings at which management discussed work-related matters, including workplace safety and information about current or upcoming projects. The "safety" meetings took place at Defendants' offices in Indio and El Centro and generally ran about 15 to 20 minutes. The "foreman" meetings generally ran two to three hours.

24. Defendants required that all employees attend the "safety" meetings, and that leads and foreman attend the "foreman" meetings. Defendants required all employees to attend even when employees were not scheduled to work, when Defendants had no work to assign employees, or employees had elected not to work. Defendants refused to pay Plaintiffs and other similarly situated employees who reported to work solely to attend the meeting (as required) for the time spent at the meeting or any other amount.

Retaliation

25. Beginning in or about August of 2007, Plaintiff Gallo spoke to Randy Nelson and Ruben Holquin on a number of occasions in which he raised questions about and objected to a number of Defendants' pay and expense reimbursement practices.

26. At the end of most work days, Plaintiff Angel Miramontes spent several minutes to more than an hour contacting his crew members to disseminate the next days' work

1 location and schedule, however Defendants refused to pay him for this work. Beginning
2 sometime in 2006, Plaintiff Angel Miramontes began complaining to Randy Nelson and Ruben
3 Holquin about not receiving compensation for this time and for the time he spent at the start of
4 each workday assigning employees work locations. Plaintiff Angel Miramontes also repeatedly
5 complained to Randy Nelson and Ruben Holquin about not getting paid for travel time and not
6 getting reimbursed for travel expenses.

7 27. Both at the time that Plaintiff Gallo and Plaintiff Angel Miramontes
8 raised their complaints and thereafter, Nelson and Holquin exhibited hostility toward them.

9 28. Beginning in or about August of 2007, Randy Nelson responded to
10 questions and complaints that employees raised at meetings concerning wages or expense
11 reimbursement by urging them to quit if they had a problem with Defendants' practices and that
12 they (Nelson and Ruben Holquin) would simply "bring in more guys from Mexicali." At a
13 meeting at the end of the workday on or about August 31, 2007, Nelson and Holquin stated to
14 employees that they knew that the employees had spoken with legal counsel regarding
15 Defendants' pay practices. Nelson and Holquin suggested that the employees "go ahead" and
16 file a lawsuit, and threatened that while they "might recover some money" they would lose their
17 jobs and have no work

18 29. On August 31, 2007, Defendants terminated Plaintiff Gallo and Plaintiff
19 Angel Miramontes. Although they claimed that they had to terminate them for lack of work, in
20 fact Defendants had ample work to assign Plaintiffs Gallo and Angel Miramontes. Defendants
21 based their decision to terminate Plaintiffs Gallo and Angel Miramontes not on the amount of
22 work but because of Gallo's and Angel Miramontes' repeated objections to Defendants' illegal
23 pay practices, their insistence that Defendants pay them and other similarly situated employees
24 all amounts owed, Plaintiffs Gallo's and Angel Miramontes' discussions with other employees
25 regarding their wages and Defendants' illegal pay practices, and, as to Plaintiff Gallo, because
26 of his request to take leave to spend time with his newborn child (as alleged below).

Prevailing Wage Claim

30. Throughout the period during which Plaintiffs and other similarly situated employees have worked for Defendants, and during the period relevant to the claims asserted in this Complaint, Defendants secured contracts with federal, state, and local government agencies, subject to federal and California prevailing wage laws. Plaintiffs and other similarly situated employees worked on these prevailing wage assignments on a number of occasions and for various lengths of time.

31. Although Plaintiffs and other similarly situated employees noted on each time card the particular job assignment(s) worked each workday and the hours worked at each assignment, and in some cases expressly identified particular assignments as prevailing wage jobs, Defendants failed to pay them the appropriate prevailing wage for all hours worked on that assignment. Similarly, on some occasions Defendants intentionally misstated or misclassified the job classification Plaintiffs and other similarly situated employees held while working on prevailing wage projects. For example Defendants misclassified Plaintiff Angel Miramontes as an installer, when in fact, he worked as a foreman on the projects. On some occasions, Defendants' supervisors notified one or more of the Plaintiffs and other similarly situated employees that they would not receive the prevailing wage rate even though they had worked on a prevailing wage job assignment. Moreover, Defendants' supervisors notified one or more of the Plaintiffs and other similarly situated employees that Defendants would pay them an hour of overtime based on their regular (non-prevailing wage) rate instead of the prevailing wage applicable to that project.

Forfeiture of Accrued, Unused Vacation

32. In approximately May 2007, Defendant Masco acquired Defendant Guy Evans. As a consequence of this acquisition, Defendant Guy Evans terminated Plaintiffs' and other similarly situated employees' employment. Notwithstanding the termination of

1 employment, Defendants failed to pay all terminated employees the full amount of accrued and
2 unused vacation they had remaining as of the termination date.

3
4 **Denial of Plaintiff Gallo's Request for Leave**

5 33. On July 9, 2007, Plaintiff Gallo's wife gave birth to their second child.
6 On August 29, 2007, Plaintiff Gallo contacted the human resources representative (Veronica
7 [last name unknown]) in Defendants' offices in Indio, California to request time off to spend
8 with his wife and newborn child. He requested three months of leave. Veronica responded that
9 the company would not pay Plaintiff Gallo for any time off and that she would first have to
10 check with the corporate offices in Florida before granting any leave.

11 34. Plaintiff Gallo responded that he understood that Defendants would not
12 pay him while on leave. Plaintiff Gallo explained that he simply wanted to ensure that
13 Defendants would hold his position for him while on leave so that he would have a job upon
14 returning from leave. Veronica told Plaintiff Gallo that she would contact him after she had
15 spoken with the corporate office. Neither she nor anyone else asked Plaintiff Gallo to submit
16 any documents or fill out any forms regarding his leave request. Veronica did not contact
17 Plaintiff Gallo again, and no one else spoke with him about his request for leave.

18 35. On August 30, 2007, Ruben Holguin called Plaintiff Gallo at Gallo's
19 home and asked him to report to work the next day at 6:45 a.m. When Plaintiff Gallo arrived on
20 August 31, 2007, Ruben Holguin and Randy Nelson notified him that Defendants had decided
21 to terminate his employment. During the meeting, Nelson told Plaintiff Gallo that Defendants
22 did not have enough work for him and they gave him his final paycheck.

23 36. On February 28, 2008, Plaintiff Gallo filed a charge with the California
24 Department of Fair Employment & Housing ("DFEH") – requesting that the Department
25 concurrently file the charge with the United States Equal Employment Opportunity Commission
26

1 – concerning Defendants' refusal to grant him leave and his subsequent termination. On or
 2 about March 18, 2008, the DFEH issued Plaintiff Gallo a right-to-sue notice.

4 COLLECTIVE ACTION ALLEGATIONS

5 37. Plaintiffs bring this action on behalf of themselves and other employees
 6 similarly situated as authorized under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. section
 7 216(b). The employees similarly situated include all of the following:

8 Plaintiffs and all other persons who are or have been employed by
 9 Defendants, or any one of them, as Installers, Garage Door
 10 Installers, Baseboard Installers, Leads, Foreman at Defendants'
 11 locations in Indio, Calexico, Heber, El Centro, Brawley, Imperial,
 12 or Calipatria from January 2004 to the present

13 Plaintiffs and all other persons who were terminated from
 14 employment with Defendant Guy Evans, Inc. in connection with
 15 Defendant Masco Corporation's acquisition of Defendant Guy
 16 Evans, Inc. in approximately May 2007

17 38. Upon information and belief Plaintiffs allege that Defendants suffered
 18 and permitted Plaintiffs and the Collective Class to work more than forty hours per week
 19 without appropriate overtime compensation.

20 39. Defendants' unlawful conduct has been widespread, repeated, and
 21 consistent.

22 40. Upon information and belief, Defendants knew that Plaintiffs and the
 23 Collective Class, performed work that required overtime pay. Defendants have operated under a
 24 scheme to deprive these employees of appropriate overtime compensation by failing to properly
 25 compensate them for all hours worked.

26 41. Defendants' conduct, as set forth in this Complaint, was willful and in
 27 bad faith, and has caused significant damages to Plaintiffs, and the Collective Class.

28 42. Defendants are liable under the FLSA for failing to properly compensate
 Plaintiffs and the Collective Class, and as such, the Court should order distribution of notice of

1 this action to the Collective Class. There are numerous similarly situated current and former
2 employees of Defendants who have been denied overtime pay in violation of the FLSA who
3 would benefit from the issuance of a Court supervised notice of the present lawsuit and the
4 opportunity to join in the present lawsuit. Those similarly situated employees are known to
5 Defendants, and Defendants can readily identify these individuals through Defendants' records.

6 7 CLASS ACTION ALLEGATIONS

8 43. Plaintiffs brings this action on behalf of themselves and as a class action
9 pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class:

10 Plaintiffs and all other persons who are or have been employed by
11 Defendants, or any one of them, as Installers, Garage Door
12 Installers, Baseboard Installers, Leads, Foreman at Defendants'
13 locations in Indio, Calexico, Heber, El Centro, Brawley, Imperial,
14 or Calipatria from January 2004 to the present.

15 Plaintiffs and all other persons who were terminated from
16 employment with Defendant Guy Evans, Inc. in connection with
17 Defendant Masco Corporation's acquisition of Defendant Guy
18 Evans, Inc. in approximately May 2007 (the "Proposed Class").

19 44. Numerosity: The plaintiff class is so numerous that the individual joinder
20 of all members is impractical under the circumstances of this case.

21 45. Typicality: Plaintiffs' claims are typical of the members of the
22 Proposed Class in that Defendants acted uniformly with respect to Plaintiffs and all members of
23 the Proposed Class and subjected all of them to the same unlawful pay practices set forth in this
24 Complaint.

25 46. Superiority: A class action is superior to other available methods for
26 the fair and efficient adjudication of the controversy, particularly in the context of wage and
27 hour litigation such as this where individual plaintiffs lack the financial resources to vigorously
28 prosecute separate lawsuits in court against large corporate defendants and where those
plaintiffs reasonably fear retaliation as a consequence of doing so.

1 47. Adequacy: Plaintiffs will fairly and adequately protect the interests of
2 the Proposed Class, and they have retained counsel experienced in complex wage and hour class
3 and collective action litigation.

4 48. Commonality: Common questions of law and fact exist as to all members
5 of the Proposed Class and predominate over any questions that affect only individual class
6 members. The common questions of law and fact include, but are not limited to:

7 (a) Whether the Defendants violated the FLSA by failing to pay Plaintiffs and
8 members of the Proposed Class at the overtime rate for all hours worked in excess of 40 in a
9 workweek;

10 (b) Whether the Defendants violated the California Labor Code and applicable
11 IWC Wage Orders by failing to pay Plaintiffs and members of the Proposed Class appropriate
12 overtime wages at the applicable rates;

13 (c) Whether the Defendants violated the California Labor Code and applicable
14 IWC Wage Orders by failing to pay Plaintiffs and members of the Proposed Class reporting time
15 pay as required;

16 (d) Whether the Defendants violated the California Labor Code and applicable
17 IWC Wage Orders by failing to pay Plaintiffs and members of the Proposed Class minimum wage
18 for all hours worked;

19 (e) Whether Defendants violated Labor Code section 226 by failing to
20 provide adequate itemized wage statements to Plaintiffs and members of the Proposed Class;

21 (f) Whether the Defendants violated the Labor Code and applicable IWC
22 Wage Orders by failing to provide Plaintiffs and members of the Proposed Class with thirty-
23 minute duty-free meal periods as required under California law;

24 (g) Whether Defendants violated Labor Code sections 201, 202, and 203 by
25 failing to timely pay all wages due and owing to Plaintiffs Erick Gallo, Plaintiff Angel
26

1 Miramontes, and all other members of the Proposed Class whose employment with Defendants
2 has terminated;

3 (h) Whether Defendants violated Labor Code section 2802 by failing to
4 reimburse Plaintiffs and members of the Proposed Class for all expenses reasonably incurred in
5 connection with the performance of their job duties;

6 (i) Whether Defendants violated the Labor Code by failing to pay Plaintiffs
7 and members of the Proposed Class at the prevailing wage rate for work performed on qualifying
8 public works projects;

9 (j) Whether Defendants violated Business & Professions code section 17200,
10 *et seq.*, by engaging in the acts alleged herein; and

11 (k) Whether Plaintiffs and members of the Proposed Class are entitled to
12 equitable relief pursuant to Business & Professions code section 17200, *et seq.*

13 49. Public Policy Considerations: When employers violate state wage and
14 hour laws in the manner and to the extent as alleged in this action, a fear of direct or indirect
15 retaliation often dissuade current employees from asserting their rights. Former employees
16 often fear pursuing their rights due to a perception that their former employers can frustrate their
17 efforts to find future employment through negative references and other means. Class actions
18 provide the class members not named in the complaint with a type of anonymity that allows for
19 vindication of their rights.

20 50. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1)
21 because prosecution of actions by or against individual members of the Proposed Class would
22 result in inconsistent or varying adjudications and create the risk of incompatible standards of
23 conduct for Defendants. Further, adjudication of each individual member's claim as separate
24 action would be dispositive of the interest of other individuals not party to this action, impeding
25 their ability to protect their interests.

1 51. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3)
2 because questions of law and fact common to the Proposed Class predominate over any
3 questions affecting only individual members of the Proposed Class, and because a class action is
4 superior to other available methods for the fair and efficient adjudication of this litigation.
5 Defendants' common and uniform policies and practices denied the Proposed Class the
6 overtime pay to which they are entitled. The damages suffered by the individual Proposed Class
7 members are small compared to the expense and burden of individual prosecution of this
8 litigation. In addition, class certification is superior because it will obviate the need for unduly
9 duplicative litigation that might result in inconsistent judgments about Defendants' practices.

10 52. Plaintiffs intend to send notice to all members of the Proposed Class to
11 the extent required by Rule 23. Defendants have available the names and addresses of the
12 members of the Proposed Class.

13 **FIRST CAUSE OF ACTION**

14 **(Failure to Pay Overtime Wages in Violation of the Fair Labor Standards Act)**

15 53. Plaintiffs incorporate by reference in this cause of action each allegation
16 of paragraphs 1 through 52 inclusive, as though fully set forth herein.

17 54. Plaintiffs consent in writing to be a party of this action, pursuant to 29
18 U.S.C. section 216(b). Plaintiffs attach their written consent forms to this complaint. Plaintiffs
19 anticipate that as this case proceeds, other individuals will sign consent forms and join as
20 plaintiffs.

21 55. At all relevant times, each Defendant has been, and continues to be, an
22 "employer" engaged in interstate commerce and/or in the production of goods for commerce,
23 within the meaning of the FLSA, 20 U.S.C. section 203. At all relevant times, each Defendant
24 has employed and continues to employ employees, including Plaintiffs and the members of the
25

1 Collective Class. At all relevant times, upon information and belief each Defendant has had
2 gross operating revenues in excess of \$500,000.00.

3 56. The FLSA requires covered employers, including Defendants, to
4 compensate all non-exempt employees at a rate of not less than one and one-half times the
5 regular rate of pay for work performed in excess of forty hours per work week.

6 57. During their employment with Defendants, within the applicable statute
7 of limitations, Plaintiffs and the other members of the Collective Class worked in excess of forty
8 hours per workweek. Despite the hours worked by these individuals, Defendants willfully, in
9 bad faith, and in knowing violation of the FLSA, failed and refused to pay them the appropriate
10 overtime compensation for all the hours worked in excess of forty.

11 58. By failing to accurately record, report, and/or preserve records of hours
12 worked by Plaintiffs and members of the Collective Class, Defendants have failed to make,
13 keep, and preserve records with respect to each of its employees sufficient to determine their
14 wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29
15 U.S.C. sections 201, *et seq.*

16 59. The foregoing conduct, as alleged, constitutes a willful violation of the
17 FLSA, within the meaning of 29 U.S.C. section 255(a).

18 60. Plaintiffs, on behalf of themselves and the Collective Class, seek damages
19 in the amount of their respective unpaid overtime compensation, liquidated damages from three
20 years immediately preceding the filing of this action, plus interests and costs as allowed by law,
21 pursuant to 29 U.S.C. sections 216(b) and 255(a), and such other legal and equitable relief as the
22 Court deems just and proper.

23 61. Plaintiffs, on behalf of themselves and the Collective Class, seek recovery
24 of their attorneys' fees and costs pursuant to the FLSA, 29 U.S.C. section 216(b).

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Wages in Violation of California Law)

62. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 61 inclusive, as though fully set forth herein.

63. Pursuant to California Labor Code section 510, employees in California earn overtime pay after working eight (8) hours in a day and/or forty (40) hours in a week.

64. Labor Code section 1198 prohibits an employer from employing persons for hours longer than the hours set by the Industrial Welfare Commission ("IWC"), or under conditions prohibited by the applicable wage orders of the IWC. Wage Order No. 16 applies (or applied) to Plaintiffs and all other current and former employees of Defendants described as members of the class.

65. At all times relevant hereto, Wage Order No. 16 has provided:

- (a) an employee who works more than forty hours in a week must receive overtime compensation at the rate of one and one-half times his or her regular hourly rate for each overtime hour worked; and
- (b) an employee who works more than eight hours in a day must receive overtime compensation at the rate of one and one-half times his or her regular hourly rate for hours worked in excess of eight hours per day and at a rate of two times his or her hourly rate for hours worked in excess of twelve hours per day.

66. During their employment with Defendants, within the applicable statute of limitations, Plaintiffs and the other members of the Proposed Class worked, on average, more than eight hours per day and more than 40 hours per week. Despite the hours worked by these individuals, Defendants willfully, in bad faith, and in knowing violation of the California Labor Code, failed and refused to pay them overtime compensation.

67. Pursuant to California Labor Code section 1194, Plaintiffs and the other members of the Proposed Class are entitled to recover their unpaid overtime compensation plus interest, attorneys' fees and costs.

(Failure to Pay Reporting Time Wages in Violation of California Law)

69. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 68 inclusive, as though fully set forth herein.

70. Section 5(A) of Wage Order No. 16 provides that:

Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

71. As alleged herein, Defendants required Plaintiffs and the members of the Proposed Class to report to work to attend meetings on days on which Defendants had not scheduled them to work and on which Defendants did not provide them any work. On those occasions when Defendants did so, they failed to pay them for the time spent at the meeting.

72. Defendants' actions violated Section 5(A) of Wage Order No. 16, and Plaintiffs and the members of the Proposed Class are therefore entitled to payment of additional wages as provided by law plus interest, attorneys' fees and costs.

73. In taking the above actions, Defendants acted with malice, fraud and oppression, and in reckless and conscious disregard of the rights of Plaintiffs and the Proposed Class, entitling Plaintiff and the Proposed Class to an award of punitive damages.

FOURTH CAUSE OF ACTION

(Failure to Pay Minimum Wage for All Hours Worked in Violation of California Law)

74. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 73 inclusive, as though fully set forth herein.

75. Labor Code section 1194 and IWC Wage Order 16-2001 require employers to pay employees at least minimum wage for all hours worked.

76. Defendants routinely refused or failed to pay Plaintiffs and the members of the Proposed Class for all hours they worked that qualified as compensable under California law, including but not limited to time spent (i) gathering, loading, unloading, and transporting tools and materials at the beginning and end of the workday, (ii) time spent traveling to and from job locations, and (iii) time spent in mandatory work meetings.

77. By refusing and failing to pay Plaintiffs and the members of the Proposed Class for all compensable time they worked, Defendants failed not only to pay them the agreed-upon rate but also failed to pay them at least the minimum wage for all hours worked. Consequently, in addition to recovering the unpaid wages, Plaintiffs and the Proposed Class are entitled to recover liquidated damages, interest, and attorneys' fees, pursuant to Labor Code sections 218.5, 218.6, 1194 and 1194.2.

78. In taking the above actions, Defendants acted with malice, fraud and oppression, and in reckless and conscious disregard of the rights of Plaintiffs and the Proposed Class, entitling Plaintiff and the Proposed Class to an award of punitive damages.

FIFTH CAUSE OF ACTION

(Failure to Pay Prevailing Wages in Violation of California Law)

79. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 78 inclusive, as though fully set forth herein.

Except for public works projects of one thousand dollars (\$ 1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

82. During the course of their employment with Defendants, Plaintiffs and members of the Proposed Class worked on a number of projects that qualify as public work projects subject to Labor Code section 1771. Defendants failed to pay Plaintiffs and members of the Proposed Class the prevailing wage rate for work done on these projects.

83. Plaintiffs and the Proposed Class are therefore entitled to recover the difference between the actual wages paid for work performed on qualifying public works projects and the applicable prevailing wage rate(s).

(Failure to Provide Meal Periods in Violation of California Law)

85. California Labor Code section 226.7 prohibits an employer from requiring any employee to work during any meal mandated by an applicable IWC wage order. Under Section 226.7, an employer that fails to provide an employee with a required meal period must pay that employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal is not provided.

1 86. California Labor Code section 512 prohibits an employer from employing
2 an employee for a work period of more than five hours per day without providing the employee
3 a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day
4 without providing the employee with a second meal period of not less than 30 minutes.

5 87. Section 11 of Wage Order No. 16 provides in relevant part that:

6 (A) No employer shall employ any person for a work period of
7 more than five (5) hours without a meal period of not less than 30
8 minutes, except that when a work period of not more than six (6)
9 hours will complete the day's work the meal period may be waived
10 by mutual consent of the employer and employee. . . (C) Unless the
11 employee is relieved of all duty during a 30 minute meal period, the
12 meal period shall be considered an "on duty" meal period and
13 counted as time worked. An "on duty" meal period shall be
14 permitted only when the nature of the work prevents an employee
15 from being relieved of all duty and when by written agreement
16 between the parties an on-the-job paid meal period is agreed to. The
17 written agreement shall state that the employee may, in writing,
18 revoke the agreement at any time. (D) If an employer fails to
19 provide an employee a meal period in accordance with the
20 applicable provisions of this Order, the employer shall pay the
21 employee one (1) hour of pay at the employee's regular rate of
22 compensation for each work day that the meal period is not
23 provided.

24 88. Defendants failed to provide Plaintiffs and members of the Proposed
25 Class with meal periods as required by law. Plaintiffs and the Proposed Class are therefore
26 entitled to payment of additional wages and meal period premiums as provided by law plus
27 interest, attorneys' fees and costs.

28 89. In taking the above actions, Defendants acted with malice, fraud and
oppression, and in reckless and conscious disregard of the rights of Plaintiffs and the Proposed
Class, entitling Plaintiffs and the Proposed Class to an award of punitive damages.

SEVENTH CAUSE OF ACTION**(Failure to Provide Accurate Itemized Wage Statements in Violation of California Law)**

90. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 89 inclusive, as though fully set forth herein.

91. Pursuant to California Labor Code section 226(a), employers must at the time of each payment of wages provide each employee with a wage statement itemizing, among other things: (1) gross wage earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the employee's name and social security number; (8) the employer's name and address of the legal entity that qualifies as the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

92. California Labor Code section 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Section 226(a) may recover the greater of his or her actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

93. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiffs and the members of the Proposed Class in accordance with Labor Code section 226. Accordingly, Plaintiffs and the Proposed Class may recover the damages and penalties provided for under Labor Code Section 226(e) plus interest, attorneys' fees and costs.

1 94. In taking the above actions, Defendants acted with malice, fraud and
2 oppression, and in reckless and conscious disregard of the rights of Plaintiffs and the Proposed
3 Class, entitling Plaintiffs and the Proposed Class to an award of punitive damages.

4
5 **EIGHTH CAUSE OF ACTION**

6 **(Waiting Time Penalties)**

7
8 95. Plaintiffs incorporate by reference in this cause of action each allegation
9 of paragraphs 1 through 94 inclusive, as though fully set forth herein.

10 96. During the relevant time period, many Class Members, including
11 Plaintiffs Erick Gallo and Angel Miramontes, ended their employment relationship with
12 Defendants through either involuntary termination or resignation. Defendants, however,
13 willfully failed and refused to pay these persons either at the time of termination or within 72
14 hours of their resignation as required under California law.

15 97. As a result of their failure to timely pay all wages owed at the time of
16 termination or, as applicable, within 72 hours of resignation, Defendants owe waiting time
17 penalties under Labor Code sections 201, 202 and 203 to Plaintiffs Gallo and Angel Miramontes
18 and those members of the Proposed Class whose employment with Defendants ended.

19
20 **NINTH CAUSE OF ACTION**

21 **(Failure to Reimburse Travel Costs and Other Business Expenses in Violation of California**
22 **Law)**

23 98. Plaintiffs incorporate by reference in this cause of action each allegation
24 of paragraphs 1 through 97 inclusive, as though fully set forth herein.

25 99. California Labor Code section 2802 requires employers to reimburse
26 employees for expenses they reasonably incur in performing their job duties.

100. Defendants required Plaintiffs and other members of the Proposed Class to travel to various job sites to perform their job duties, often requiring them to travel to job sites more than 100 miles from their primary assigned work site and often requiring that they travel to numerous different work sites throughout the day. Although Defendants required Plaintiffs and other members of the Proposed Class to use their own vehicles for this travel, Defendants' policy and practice for reimbursing business expenses either failed entirely to reimburse them for the expenses they incurred in connection with this travel (including the cost of gasoline, insurance, registration of the vehicle, and wear on the vehicle) or reimbursed only a flat amount that fell far short of compensating for the expenses Plaintiffs and the other members of the Proposed Class actually incurred.

101. Defendants' reimbursement policy violated California Labor Code section 2802. Plaintiffs and the Proposed Class are therefore entitled to reimbursement for the travel and other business expenses reasonably incurred in performing their job duties plus interest, attorneys' fees and costs.

102. In taking the above actions, Defendants acted with malice, fraud and oppression, and in reckless and conscious disregard of the rights of Plaintiffs and the Proposed Class, entitling Plaintiffs and the Proposed Class to an award of punitive damages.

TENTH CAUSE OF ACTION

(Unfair Business Practices in Violation of California Business & Professions Code §§ 17200 et seq.)

103. Plaintiffs incorporate by reference in this cause of action each allegation of paragraphs 1 through 102 inclusive, as though fully set forth herein.

104. Defendants' statutory and regulatory violations alleged herein constitute an unlawful business action and practice in violation of Business and Professions Code sections 17200 et seq.

1 105. Pursuant to Business and Professions Code sections 17200 *et seq.*,
2 Plaintiffs and the Proposed Class are entitled to (i) restitution of the unpaid wages and overtime
3 alleged herein that Defendants withheld and retained during the period commencing four years
4 prior to the filing of this action, (ii) a permanent injunction requiring prohibiting further
5 violations of the type alleged herein for the period commencing four years, (iii) an award of
6 attorneys' fees pursuant to applicable law, (iv) and costs.

7
8 **ELEVENTH CAUSE OF ACTION**

9 **(Violation of the Family Medical Leave Act — Plaintiff Erick Gallo Against All Defendants)**

10 106. Plaintiff Gallo incorporates by reference in this cause of action each
11 allegation of paragraphs 1 through 105 inclusive, as though fully set forth herein.

12 107. The Family Medical Leave Act ("FMLA"), 29 U.S.C section 2601 *et*
13 *seq.*, provides eligible employees the right to take up to 12 weeks of leave for certain qualifying
14 conditions, including time off of work to spend with a newborn child. The FMLA makes it
15 unlawful for an employer to interfere with an employee's rights under the FMLA or to deny an
16 employee his or her rights under the FMLA.

17 108. At the time Plaintiff Gallo requested leave in August 2007 to spend time
18 with his newborn child, he qualified for 12 weeks of leave under the FMLA. In denying
19 Plaintiff Gallo the requested leave and thereafter terminating him, in whole or in part due to his
20 request for leave, Defendants violated the FMLA.

21 109. As a direct and proximate result of Defendants' unlawful actions in this
22 regard, Plaintiff Gallo suffered damages and continues to suffer damages, including but not
23 limited to economic injury and loss, and the loss of his employment and the resulting damages
24 he incurred as a result.

1 110. In taking these actions, Defendants acted willfully and in reckless
2 disregard of Plaintiff Gallo's rights.

3 **TWELFTH CAUSE OF ACTION**

4 **(Violation of the California Family Rights Act — Plaintiff Erick Gallo Against All**
5 **Defendants)**

6 111. Plaintiff Gallo incorporates by reference in this cause of action each
7 allegation of paragraphs 1 through 110 inclusive, as though fully set forth herein.

8 112. The California Family Rights Act ("CFRA"), California Government
9 Code section 12945.2, provides eligible employees the right to take up to 12 weeks of leave for
10 certain qualifying conditions, including time off of work to spend with a newborn child. The
11 CFRA makes it unlawful for an employer to deny an eligible employee leave for which he or
12 she qualifies under the CFRA or to discriminate against an employee because he or she sought
13 to exercise rights under the CFRA.

14 113. At the time Plaintiff Gallo requested leave in August 2007 to spend time
15 with his newborn child, he qualified for 12 weeks of leave under the CFRA. In denying
16 Plaintiff Gallo the requested leave and thereafter terminating him, in whole or in part due to his
17 request for leave, Defendants violated the CFRA.

18 114. As a direct and proximate result of Defendants' unlawful actions in this
19 regard, Plaintiff Gallo suffered damages and continues to suffer damages, including but not
20 limited to emotional distress, economic injury and loss, and the loss of his employment and the
21 resulting damages he incurred as a result.

22 115. In taking these actions, Defendants acted with malice, fraud and
23 oppression, and in reckless disregard of Plaintiff Gallo's rights entitling him to an award of
24 punitive damages.

THIRTEENTH CAUSE OF ACTION

(Termination in Violation of California Fundamental Public Policy —Plaintiffs Erick Gallo and Angel Miramontes Against All Defendants)

116. Plaintiff Erick Gallo and Angel Miramontes incorporate by reference in this cause of action each allegation of paragraphs 1 through 115 inclusive, as though fully set forth herein.

117. Defendant terminated Plaintiff Gallo because of his opposition to Defendants' unlawful pay practices, as alleged herein, and because of his request for a qualifying leave under the FMLA and CFRA. In doing so, Defendants violated the fundamental, substantial and well-established public policies of the state of California as embodied in its Statutes and Constitution and in federal statutes.

118. Defendant terminated Plaintiff Angel Miramontes because of his opposition to Defendants' unlawful pay practices, as alleged herein. In doing so, Defendants violated the fundamental, substantial and well-established public policies of the state of California as embodied in its Statutes and Constitution and in federal statutes.

119. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs Gallo and Miramontes suffered damages and continue to suffer damages, including but not limited to emotional distress, economic injury and loss, the loss of employment and the resulting damages incurred as a result.

120. In taking these actions, Defendants acted with malice, fraud and oppression, and in reckless disregard of the rights of Plaintiffs Gallo and Miramontes entitling them to an award of punitive damages.

DEMAND FOR JURY TRIAL

121. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, individually and on behalf of the Collective Class and Proposed Class demand a trial by jury.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs, on behalf of themselves, the Collective Class and the Proposed, request judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

A. That the Court certify this action as a class action on behalf of the proposed class;

B. That the Court find that Defendants violated the overtime provisions of the Fair Labor Standards Act as to Plaintiffs and the Collective Class;

C. That the Court find that Defendants violated the California Labor Code and IWC Wage Orders as to Plaintiffs and the Proposed Class;

D. That the Court find that Defendants willfully failed to provide Plaintiffs and the Proposed Class the itemized wage statements required under California Labor Code section 226;

E. That the Court find that Defendants violated provisions of the Labor Code and Wage Orders regarding meal periods as to Plaintiffs and the Proposed Class;

F. That the Court find willful the violations described above;

G. That Plaintiffs and the Proposed Class receive an award in the amount of unpaid wages owed, including interest thereon, and penalties subject to proof at trial;

H. That Plaintiffs and the Proposed Class receive an award of punitive damages against Defendants;

1 I. That the Court enjoin Defendants and order them to pay restitution to
2 Plaintiffs and the Proposed Class due to Defendants' unlawful activities, pursuant to Business
3 and Professions Code sections 17200-05;

4 J. That the Court further enjoin Defendants to cease and desist from
5 unlawful activities in violation of California Business and Professions Code section 17200;

6 K. That the Court find that Defendants have violated sections 201, 202 and
7 203 of the California Labor Code for willful failure to pay all compensation owed at the time of
8 separation to Plaintiffs and members of the Proposed Class no longer working for Defendants;

9 L. That the Court award Plaintiffs and the Proposed Class reasonable
10 attorneys' fees and costs pursuant to applicable law;

11 M. That the Court grant such other and further relief, in law or equity, as the
12 Court deems appropriate and just; and

13 N. As to the claims they assert individually and not on behalf of the
14 Proposed Class, Plaintiffs Erick Gallo and Angel pray for judgment against Defendants, for
15 general and special damages, for liquidated damages and punitive damages, for attorneys' fees
16 and costs, for interest on all sums at the maximum legal rate, and for such other relief as the
17 Court deems just and proper.

18 Dated: April 2, 2008

RUKIN HYLAND DORIA & TINDALL LLP

19 By: 
20

John F. Hyland

21 GULLEDGE LAW GROUP

22 Linda Gulledge

23 Kelly Woody Gulledge

24 Attorneys for Individual
and Representative Plaintiffs

25 ERICK GALLO, ARMANDO GUTIERREZ,
26 ANGEL MIRAMONTES, ANTONIO
MIRAMONTES, LUIS MIRAMONTES, and
MANUEL MONTES

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149337 - SH

**April 02, 2008
14:18:16**

Civ Fil Non-Pris

USAO #: 08CV0604-J

Amount.: \$350.00 CK

Check#: BC3015518

Total-> \$350.00

FROM: GUTIERREZ ET AL V. MASCO CORP

ORIGINAL

IS 44 (Rev. 11/04)

CIVIL COVER SHEET

e JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Ilo, Erick; Gutierrez, Armando; Miramontes, Angel; Miramontes, onio; Miramontes, Luis; and Montes, Manuel

(b) County of Residence of First Listed Plaintiff Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

in Hyland, Rukin Hyland Doria & Tindall LLP, 100 Pine Street,
te 725, San Francisco, CA 94111

DEFENDANTS

Masco Corporation, Masco Services Group Corporation, Guy Evans Inc., Builder Services Group, Inc.

County of Residence of First Listed Defendant Imperial
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED

Attorneys (If Known)

BASIS OF JURISDICTION (Place an "X" in One Box Only)

- U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|--|---|---|--|
| <input type="checkbox"/> 10 Insurance <input type="checkbox"/> 20 Marine <input type="checkbox"/> 30 Miller Act <input type="checkbox"/> 10 Negotiable Instrument <input type="checkbox"/> 50 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 1 Medicare Act <input type="checkbox"/> 2 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 3 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 0 Stockholders' Suits <input type="checkbox"/> 0 Other Contract <input type="checkbox"/> 5 Contract Product Liability <input type="checkbox"/> 6 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |

ORIGIN (Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC Sections 201, et seq.

CAUSE OF ACTION

Brief description of cause:
Failure to pay overtime wages.

REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

4/02/2008

OFFICE USE ONLY

CEIPT # 149337 AMOUNT \$350 APPLYING IFP SEE JUDGE 4/2/08 MAG. JUDGE